

1. TITLE

- Short title

2. COMMENCEMENT

- When does the Act come into force

3. APPLICATION

- Whom the Act covers

4. INTERPRETATION/DEFINITIONS

In this Act, the following definitions apply:

- Advance directive: means a directive made by a person under <section about advanced directives> that sets out the person's will and preferences in relation to care and treatment if it becomes necessary
- Commission: means the Mental Health Commission established under <section about commission>
- Caregiver: means any person who provides assistance, care and support to persons who may have or have a mental illness in a non-professional capacity
- Child: refers to any person under the age of 18
- Facilitated admission: admission of persons with mental illness under <section on facilitated admission>
- Government: refers to the Government of Barbados
- Health facility: means any facility providing health care and treatment which is not a designated mental health facility
- least restrictive alternative: means offering an option for treatment or a setting for treatment which—
 - o (i) meets the person's treatment needs; and
 - o (ii) imposes the least restriction on the person's rights and autonomy;
- Mental healthcare or mental health treatment: includes biological and psychological treatments, social care for mental illness, and curative and rehabilitative services, provided either in a health or mental health facility or in the community
- Mental health facility: means a facility which is a public or private hospital, or a primary health care centre or treatment facility in the community, specifically providing care and treatment for persons who have a mental illness
- Mental health professional: includes registered psychiatrists, registered clinical or counselling psychologist, registered Community Psychiatric Nurse, registered Nurse Practitioners and any others authorised by the Minister of Health based on recommendations by the Commission
- Mental illness: refers to a diagnosis made in <section about determination of mental illness> in accordance with nationally or internationally accepted medical standards, including the latest edition of the International Classification of Diseases of the World Health Organization, or the latest edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association or as may be prescribed, but does not include intellectual disability of itself, which is a condition characterised by significant limitations in both intellectual functioning and adaptive behaviour

- Medical officer or psychiatrist in charge: Medical officer or psychiatrist in charge of a health facility or treatment of persons who have mental illness
- Medical practitioner: Medical practitioner with training in mental health as prescribed by the Commission
- Minister: unless otherwise specified means the Minister responsible for Health
- Next of kin: the closest or nearest living relative of persons who have been diagnosed with a mental illness
- Nominated representative: means the person appointed by persons who may have or have a mental illness to represent them under <section about nominated representative>
- Person: includes children unless otherwise mentioned
- Psychiatrist: means a person registered as a specialist medical practitioner as a psychiatrist
- Supported decision making: means the support given to persons who may have or have a mental illness
- Tribunal: means the Mental Health Tribunal established under <section on Tribunal>

5. PURPOSE

- To promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with mental health challenges
- To promote practices that adhere to the principles of fairness, equity, equality and justice
- To provide a legislative scheme for the assessment of persons who are suspected to have mental illness and for the treatment of persons with mental illness
- To establish the Mental Health Tribunal
- To establish the Mental Health Commission
- To promote prevention of mental illnesses and promotion of mental health

6. OBJECTIVES

- To provide for the assessment of persons who are suspected to have mental illness and the treatment of persons who have mental illness
- To provide for persons to receive assessment and treatment for mental illness with the least possible restrictions on freedom and human dignity and on an equal basis with others
- To protect the rights of persons receiving assessment and treatment for mental illness;
- To enable and support persons who have mental illness or are suspected to have mental illness:
 - o to make, or participate in, decisions about their assessment, treatment and recovery
 - o to exercise their basic human rights under this Act
- To provide oversight and safeguards in relation to the assessment of persons who are suspected to have mental illness and the treatment of persons who have mental illness;
- To promote the recovery of persons who have mental illness
- To ensure that persons who are assessed and treated under this Act are informed of their rights under this Act
- To recognise the role of carers in the assessment, treatment and recovery of persons who have mental illness
- To promote continuous improvement in and provide a framework for regulation for the quality and safety of the mental health services with respect to mental health services providers, facilities and management protocols
- To promote the development and delivery of community-based care for persons with mental illness
- To ensure efficient access to appropriate care (assessment, treatment, support services)

- To promote integration of physical and mental health care

7. DETERMINATION OF MENTAL ILLNESS

Mental illness shall be diagnosed in accordance with such nationally or internationally accepted medical standards including the latest edition of the International Statistical Classification of Diseases of the World Health Organisation or the latest edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association or as may be prescribed.

A person shall not be considered to have a mental illness by reason only of any one or more of the following:

- Intellectual disability of itself;
- That the person expresses or refuses or fails to express a particular political opinion or belief;
- That the person expresses or refuses or fails to express a particular religious opinion or belief;
- That the person expresses or refuses or fails to express a particular philosophy; That the person expresses or refuses or fails to express a particular sexual preference, gender identity, or sexual orientation;
- That the person engages in or refuses or fails to engage in a particular political activity;
- That the person engages in or refuses or fails to engage in a particular religious activity;
- Political, economic or social status or membership of a cultural, racial or religious group or for any other reason not directly relevant to the mental health status of the person;
- Nonconformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community;
- That the person engages in sexual promiscuity;
- That the person engages in illegal conduct;
- That the person engages in antisocial behaviour;
- That the person consumes alcohol or uses drugs;
- That the person has previously been involved in family conflict.

Past treatment or hospitalization in a mental health facility though relevant, shall not by itself justify any present or future diagnosis or determination of a person's mental illness. Mental illness of a person shall be determined by a mental health professional.

The determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court.

8. DECISION MAKING ABILITY

Every person is presumed to have the ability to make decisions regarding their mental healthcare or treatment. However, if they lack any one of the following, they will be deemed not to have decision making ability:

- Understand, remember, or use the information that is relevant to make a decision on their treatment, admission or personal assistance; or
- Appreciate any reasonably foreseeable consequence of a decision or lack of decision on their treatment, admission or personal assistance; or
- Communicate the decision made by means of speech, gesture or any other manner.

This information should be given to the person using simple language which the person understands or by sign language, visual aids, or any other means to enable the person to understand the information.

When assessing decision making ability, reasonable steps should be taken to conduct the assessment at a time when, and in an environment in which, the person's ability can be assessed most accurately.

When a person makes a decision regarding their mental health care or treatment which is perceived by others as inappropriate or wrong, it shall not automatically follow that the person does not have the ability to make a mental health care or treatment decision.

It should not be assumed that a person does not have the ability to make decisions based only on their age (not applicable to minors), appearance, condition or an aspect of their behaviour.

A mental health diagnosis alone is not sufficient to assume that the person does not have decision making ability.

A person's ability to make decisions may change over time and should be evaluated regularly.

Decision making ability is to be evaluated by a mental health professional (as defined in the definitions section).

If the person believes they have decision making ability beyond what is determined by the mental health professional, they can appeal to the Tribunal.

9. SUPPORTED DECISION MAKING

Advance Directive:

An advance directive is a document describing a person's preferences regarding treatment in the event of the person becoming a patient, and with impaired decision making ability. It can be made by any person irrespective of past or present mental illness and treatment.

An advanced directive can have any or all of the following:

- The way a person wishes to be cared for or treated for a mental illness
- The way a person wishes not to be cared for or treated for a mental illness
- The individual or individuals, in order of precedence, the person wants to appoint as their nominated representative

An advance directive is to be invoked only when a person ceases to have decision making ability as defined in the previous section and shall remain effective until the person regains the ability to make mental health or treatment decisions.

Any decision made by a person while he has the capacity to make mental healthcare and treatment decisions shall over-ride any previously written advance directive by such person.

An advance directive will not be applicable to any emergency treatment given as under section <section number of emergency treatment>

Any advance directive made contrary to any law for the time being in force shall be void.

An advance directive shall be made in the manner as may be specified below, or as otherwise directed by the Tribunal.

An advance directive may be made at any time and must

- Be provided in writing to the Tribunal; and
- be signed and dated by the person making the advance directive; and
- be witnessed by a witness; and
- include a directive signed by the witness stating that
 - o in the opinion of the witness, the person making the advance directive understands what an advance directive is and the consequences of making the directive; and
 - o the witness observed the person making the advance directive sign the directive
- If the advance directive specifies a nominated representative, a statement signed by the nominated person that he or she agrees to be the nominated person should be included

The Tribunal shall have a register of advance directives.

An advance directive is effective from the time it is made until it is revoked.

An advance directive can be revoked by the person who made it at any time. A revocation must:

- be in writing and state that the advance directive made is revoked; and
- be signed and dated by the person who made the revocation; and
- be witnessed by one witness; and

An advance directive is also revoked if a new advance directive is created by the person in the prescribed manner. Any person wishing to amend their advance directive must create a new one.

It shall be the duty of every mental health professional in charge of a mental health establishment and/or the psychiatrist in charge of a person's treatment to propose or give treatment to a person with mental illness, in accordance with their valid advance directive, except in the case of emergency treatment. The person making the advance directive and their nominated representative shall have a duty to ensure that the mental health professional or medical officer in charge has access to the advance directive when required.

If a mental health professional, a relative, or a caregiver of a person desires not to follow an advance directive whilst a person with mental illness is being treated, such mental health professional, relative or caregiver of the person shall make an application to the Tribunal to review, alter, modify or cancel the advance directive. An advance directive can only be amended by the Tribunal through a review process.

Upon receipt of the application, the Tribunal shall, after giving an opportunity of hearing to all concerned parties (including the person whose advance directive is in question), either uphold, modify, alter or cancel the advance directive after taking into consideration the following:

- Whether the advance directive was made by the person out of their own free will and free from force, undue influence or coercion;
- Whether the person intended the advance directive to apply to the present circumstances, which may be different from those anticipated;
- Whether the person was sufficiently well informed to make the decision;
- Whether the person had capacity to make decisions relating to their mental healthcare or treatment when such advanced directive was made;
- Whether the content of the advance directive is contrary to other laws or constitutional provisions.

A medical practitioner or a mental health professional shall not be held liable for:

- Any unforeseen consequences on following a valid advance directive
- Not following a valid advance directive if the advance directive is not available to the medical practitioner or mental health professional

The Tribunal

- shall regularly and periodically, but not less than once annually, review the use of advance directives and make recommendations in respect thereof;
- in its review, shall give specific consideration to the procedure for making an advance directive and also examine whether the existing procedure protects the rights of persons with mental illness;
- may make recommendations for the modification of the procedure for making an advance directive or make additional regulations regarding the procedure for advance directive to protect the rights of the person who made the advance directive

Nominated representative:

Any person who is not a minor can choose a nominated representative who will assist them in making healthcare decisions when their decision-making ability is impaired. These healthcare decisions could include determining the facility where the person wants to be treated, the treatment to be given for the mental illness, and participation in research.

The appointment of a nominated representative can be made through an advance directive or through the procedure below:

The nomination of a nominated person must:

- Be in writing
- Be signed and dated by the person making the nomination
- Specify the name and contact details of the person nominated
- Include a statement signed by the nominated person that he or she agrees to be the nominated person
- Include a statement signed by the witness stating that:
 - o In the opinion of the witness, the person making the nomination understands what a nomination is and the consequences of making a nomination
 - o the witness observed the person sign the nomination
- The witness cannot be the nominated person

A nomination made in this manner is effective until it is revoked.

Revocation of nomination:

A nomination is revoked if:

- The person who made the nomination makes a new nomination through the process mentioned above
- The person revokes the nomination in writing
- The nominated person declines to act as a nominated representative

Procedure for revoking the nomination in writing:

A person who has made the nomination may revoke it at any time. A revocation must:

- Be in writing

- State that the nomination is revoked
- Be signed and dated by the person making the revocation
- Be witnessed by a witness
- Include a statement signed by the witness stating that:
 - o In the opinion of the witness, the person making the revocation understands what a revocation is and the consequences of making a revocation
 - o The witness observed the person sign the revocation

A person who revokes the nomination must take reasonable steps to inform the nominated person of the revocation, and the mental health professional or medical officer in charge of their treatment if the person is a patient.

Nominated person declining to act as a nominative representative:

A person nominated can decline to be a nominated representative at any time. A nominated person who declines to continue being a nominated person must:

- Take reasonable steps to inform the person who made the nomination that they have declined to continue being the nominated person
- If the person who made the nomination is a patient, inform the authorised psychiatrist that they have declined to continue being a nominated person

The person appointed as the nominated representative shall not be a minor, shall be competent to discharge the duties or perform the functions assigned to him or her under this Act, and shall indicate in the approved and prescribed manner their consent to the mental health professional to discharge their duties and perform the functions assigned to them under this Act.

When no nominated representative is appointed by the person under the process mentioned above, the following individuals shall be deemed to be the nominated representative in descending order of precedence:

- the individual appointed as the nominated representative in the advance directive
- a relative (husband, wife, son, daughter, parent, brother or sister of the whole blood, uncle or aunt of the whole blood, nephew or niece of the whole blood, grand-parent or grand-child)
- a caregiver who is not a relative
- a suitable person appointed as such by the concerned Tribunal
- if no such person is available to be appointed as a nominated representative, the Tribunal shall appoint the Director responsible for social services, however titled, as the nominated representative of the person with mental illness

Such a person can decline to be the nominated representative, and the descending order of precedence will be followed until a person who agrees to be the nominated representative is selected.

A person representing an organisation registered as a Non-Profit Organisation working for persons with mental illness may temporarily be engaged by the mental health professional to discharge the duties of a nominated representative pending appointment of a nominated representative by the concerned Tribunal. The representative of the organisation may make a written application to the medical officer in-charge of the mental health establishment or the mental health professional in-charge of the person's treatment shall accept them as the temporary nominated representative, pending appointment of a nominated representative by the concerned Tribunal.

The Tribunal may revoke an order to appoint a nominated representative and appoint a different representative:

- on an application made to it by the person with mental illness, or by a relative of such person, or by the mental health professional responsible for the care of such person, or by the medical officer in-charge of the mental health establishment where the individual is admitted or proposed to be admitted
- If it is of the opinion that it is in the interest of the person with mental illness to do so

The appointment of a nominated representative, or the inability of a person with mental illness to appoint a nominated representative, shall not be construed as the lack of capacity of the person to take decisions about his mental health care or treatment.

All persons with mental illness shall have capacity to make mental health care or treatment decisions but may require varying levels of support from their nominated representative to make decisions.

In the case of minors:

- The parent or person having custody shall be their nominated representative, unless the Tribunal orders otherwise
- Where on an application made to the Tribunal by a mental health professional or any other person acting in the best interest of the minor, and on evidence presented before it, the Tribunal is of the opinion that:
 - o the parent or legal guardian is not acting in the best interests of the minor; or
 - o the parent or legal guardian is otherwise not fit to act as the nominated representative

it may appoint any suitable individual who is willing to act as the nominated representative of the minor with mental illness.

Provided that in case no individual is available for appointment as a nominated representative, the Tribunal shall appoint the Director responsible for social services as the nominated representative of the minor with mental illness.

At the age of gaining maturity, the Tribunal shall implement steps to assist the minor in determining a suitable nominated representative.

A nominated representative shall, as far as is practical, while fulfilling his or her duties under this Act:

- consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;
- give particular credence to the views of the person with mental illness to the extent that the person understands the nature of the decisions under consideration;
- provide support to the person with mental illness in making treatment decisions;
- assist the patient to exercise any right that the patient has under this Act
- be involved in setting treatment goals, planning, treatment, discharge, care and treatment after discharge from a mental health facility

A nominated representative shall have the right to:

- seek information on diagnosis and treatment to provide adequate support to the person with mental illness
- visit the person in a mental health facility

- give or withhold consent for research
- apply to the mental health facility for facilitated admission
- apply to the Tribunal on behalf of the person with mental illness for discharge
- apply to the Tribunal against violation of rights of the person with mental illness in a mental health establishment
- support from mental health services to enable them to effectively perform their nominated representative role

Enduring Power of Attorney (EPA)

An Enduring Power of Attorney is a document describing a person's preferences regarding healthcare, financial, and property decisions in the event of the person losing capacity to make decisions where they are unlikely to regain capacity in the foreseeable future.

It can be made by any person irrespective of past or present mental illness and treatment and will only come into play when the person loses capacity to an extent where they cannot make decisions. This loss of capacity will be determined by one psychiatrist and another professional who is either a registered medical practitioner or registered psychologist.

Through an EPA, the person can nominate an attorney or attorneys to make decisions regarding healthcare, finances, and property should they irreversibly lose capacity to do so. Different attorneys can be appointed for different areas of life decisions (eg healthcare, finances, etc). It is also not compulsory to include all types of decisions in an EPA.

An EPA should be created after consulting a health professional who must explain what the EPA can contain, the consequences of it coming into effect, and the means of appeal to revoke it if the person believes they continue to have capacity to make decisions. This information must be given in a manner that is easy for the person to understand. The health professional will also have the duty of ensuring that the person has the capacity to make decisions at the time of creation of the EPA and are not subject to any duress or undue influence.

An EPA will be created in a similar manner as the creation of a Power of Attorney in Barbados, with the addition of the role of the health professional as described above. As EPA must also be registered with the Mental Health Commission.

Revoking an EPA by the person:

While the person who created the EPA has the capacity to make decisions, they make choose to revoke it in the same manner as the revocation of a power of attorney in Barbados.

Appeals:

Should the person whose EPA is in effect be of the opinion that the EPA was wrongly invoked, and they believe that they have the capacity to make decisions, they or someone acting on their behalf with the consent of the person, may apply to the Tribunal for review of the decision invoke the EPA.

When such an application is made, the Tribunal shall:

- hold a hearing
- ensure that the person and their representative attend the hearing
- hear evidence from the medical officer in charge of the person's treatment
- give a decision regarding the revocation of the EPA which shall be binding on all the concerned parties

Financial manager

In the event of the person losing capacity to make decisions where they are unlikely to regain capacity in the foreseeable future, and they do not have an Enduring Power of Attorney in place, the following process shall be followed:

The nominated representative of the person or a first degree relative may apply to the Tribunal for the appointment of a financial manager for managing the person's affairs.

Upon such an application, the Tribunal must get two independent medical certificates, one from a psychiatrist and another from a registered medical practitioner or registered psychologist, certifying that the person has lost capacity to an extent where they are unable to make financial decisions and are unlikely to regain capacity in the foreseeable future.

This must be followed by a hearing where all parties concerned, including the person with loss of capacity, the person applying to the Tribunal for a manager, and the medical professionals certifying the loss of capacity are present.

The Tribunal will accordingly appoint a financial manager, who will not be the person who made the application to the Tribunal.

There will be a yearly review of capacity by the Tribunal. In the event that the person for whom the manager was appointed believes they have regained capacity, they can appeal to the Tribunal. The Tribunal will then hold a hearing with all parties concerned.

The nominated representative or a relative may also make an appeal to the Tribunal to revoke the financial manager if they believe the financial manager is not acting in the best interests of the person. The Tribunal will hold a hearing with all parties concerned and give a decision regarding the financial manager.

10. RIGHTS OF PERSONS WITH MENTAL ILLNESS

In addition to the human rights provided to every person in Barbados, every person who has a mental illness shall have the following rights:

- Right to give or withhold consent to care, treatment and rehabilitation services and admission to a hospital or mental health facility, unless the conditions for facilitated admission apply
- Right to initiate a process of discontinuation of psychotropic drugs and to be supported to do this safely when the person with mental illness has decision making ability
- Right to respect for their health, safety, welfare
- Right to equal enjoyment with others of the highest attainable standard of physical and mental health
- Right to equal protection of human rights and fundamental freedoms
- Right to equal recognition before the law
- Right to legal aid
- Right to equal opportunities
- Right to confidentiality
- Right to respect for their individual social, economic and cultural background, family circumstances, language, communication, age, disability, religion, or other matters recognised and responded to
- Right to religious freedom
- Right to freedom of gender and sexual orientation

- Right to be consulted, contribute to, and participate in the planning, design, implementation, monitoring and review of mental health policy and mental health services

Right of access to mental healthcare:

Every person shall have a right to access mental health care and treatment from mental health services run or funded by Government without discrimination of any kind. Such services will include:

- Acute mental health services such as outpatient and inpatient services
- Hospital and community based mental healthcare and treatment establishments
- Halfway homes, sheltered accommodation, and supported accommodation options
- Mental health services provided in the home environment to support the family of the person
- Child mental health services and old age mental health services
- Crisis intervention services

The right to access mental healthcare and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers.

Mental health services will be provided at each parish. If mental health services specified above are not available in the parish where a person with mental illness resides, the person with mental illness shall be transported to such a parish where services are offered, and the costs of the transfer will be borne by the Government.

The Government shall ensure that mental health services shall be of equal quality to other general health services and no discrimination be made in the quality of services provided to persons with mental illness.

Persons who have mental illness shall have access to treatment in the least restrictive alternative.

The Government shall maintain an Essential Drug List and all medicines on the Essential Drug List shall be made available free of cost to any person who has a mental illness at health establishments run or funded by the Government.

Non-citizens shall be, regardless of their migration status, entitled to access to mental health services and support on an equal basis with nationals.

Right to live in the community, social inclusion, and participation in social life:

Persons who have a mental illness have a right to live in, be part of, and not be segregated from the community.

Where a person with mental illness is not permitted by their family to stay in their own home, the Government shall provide support as appropriate including legal aid to facilitate exercising their right to the home and living in the home.

Every person who has a mental illness shall be provided with mental health services and community-based programs that improve the capacity of that person to develop to full potential and to facilitate their integration into community life.

Persons who have a mental illness have the right to participate in social life on an equal basis with others without discrimination of any kind.

Persons with mental illness shall have an equal right as anyone without mental illness to have children.

No parent/guardian shall be limited access to or denied custody of their child solely due to a diagnosis of mental illness.

A child under the age of three years of a mother or single parent receiving care, treatment or rehabilitation at a mental health establishment shall ordinarily not be separated from them during their stay in such establishment.

Where two mental health professionals, based on their assessment of the mother or single parent, independently conclude that there is a risk of harm to the child from the mother or single parent due to their mental illness or it is in the interest and safety of the child, the child shall be temporarily separated from the mother or single parent during their stay at the mental health establishment.

Provided further that the mother or single parent shall continue to have access to the child under such supervision of the staff of the establishment or their family, as may be appropriate, during the period of separation.

The decision to separate the mother or single parent from their child shall be reviewed every fifteen days during the person's stay in the mental health establishment and separation shall be terminated as soon as conditions which required the separation no longer exist.

Any separation permitted as per the assessment of the mental health professionals, if it exceeds thirty days at a stretch, shall require a review and approval by the Tribunal.

Parity of mental and physical healthcare:

Persons who have a mental illness shall be treated as equal to persons with physical illness in the provision of all healthcare which shall include the following:

- living conditions in health establishments shall be of the same manner, extent and quality as provided to persons with physical illness
- emergency facilities and emergency services for mental illness shall be of the same quality and availability as those provided to persons with physical illness
- persons with mental illness shall be entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness
- any other health services provided to persons with physical illness shall be provided in same manner, extent and quality to persons with mental illness
- every insurer shall make provision for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness

Right to respect for human dignity and privacy:

Persons who have a mental illness shall have a right to live with dignity, and be free from exploitation and abuse.

Every person shall be protected from cruel, inhuman or degrading treatment in any mental health establishment and shall have the following rights:

- to live in safe and hygienic environment

- To have adequate sanitary conditions
- To have reasonable facilities for leisure, recreation and education
- To privacy
- To not be subject to forced labour and receive appropriate remuneration for work when undertaken
- To be protected from all forms of physical, verbal, emotional and sexual abuse

Right to non-discrimination:

A person who has a mental illness shall not be subject to discrimination on the grounds of their mental health status.

Right to procedural accommodations to access justice effectively:

No one shall be denied access to justice on the basis of mental health status.

Where necessary, persons with mental illness shall be provided with appropriate individualized procedural accommodations to exercise their legal capacity and guarantee their access to justice.

Persons with mental illness will be provided with necessary adjustments and support to:

- understand the nature and object of the legal proceedings
- understand the possible consequences of the proceedings
- communicate effectively with legal counsel.

These procedural accommodations shall include the provision of intermediaries or facilitators, procedural adjustments and modifications, adjustments to the environment, and communication support to ensure access to justice.

All persons with mental illness subject to legal proceedings shall be informed of their right to procedural accommodation and its availability.

Should the person require it, free legal assistance will be provided by the government

Right to access medical records:

Persons who have a mental illness shall have the right to access, examine, or copy their medical record as may be prescribed.

The Consultant psychiatrist in charge or a mental health professional in charge of such medical records may withhold specific information in the medical record if disclosure would result in

- serious mental harm to the person who has a mental illness
- likelihood of harm to other persons.

When any information in the medical record is withheld from the person, the Consultant psychiatrist in charge or a mental health professional shall inform the person who has a mental illness of their right to make an application to the Tribunal for an order to release such information.

Persons who have a mental illness shall have the right to have their medical record corrected or have irrelevant portions of their medical records erased.

Right to information:

Every mental health professional shall, before initiating or administering any mental health services, inform the person who has a mental illness and their nominated representative of their rights in a manner and language they are able to understand.

Every person who has a mental illness and/or their nominated representative shall have the right to be informed of their treatment and its consequences, including the right to be informed of non-medical treatment alternatives, in a manner and language they are able to understand with a focus on accessibility of information in all forms especially for people with disabilities.

Right to communication:

Persons admitted to mental health facilities have the right to:

- Have and receive or refuse contact and communication with anyone of their choice in the community, including by visits, phone calls, mail and electronic media including email.
- Where a person admitted to a mental health facility informs the medical practitioner or mental health professional in charge of the mental health facility that they do not want to receive contact or communication from any named person in the community, the medical practitioner or mental health professional in charge may restrict such contact or communication.
- This shall not apply to contact or communication, including by visits, phone call, mail and electronic media, including email to and from the following individuals:
 - o any judge or officer authorised by a competent court
 - o members of the Mental Health Commission or Mental Health Review Tribunal
 - o the nominated representative, lawyer or legal representative of the person
 - o the medical practitioner in charge of the person's treatment
 - o any other person authorised by the Government

In addition to the above, a person when in a mental health establishment shall have a right to:

- Be informed of their rights and the treatment being provided in a language and manner they understand

If the person has been admitted to a mental health facility, and is judged to be unable to understand this information for any reason, their nominated representative if any, and next of kin shall be given the information

- Participate in treatment decisions to the extent possible
- Be transported in the least restrictive manner if needed
- Request and receive an independent examination from a mental health professional
- Timely reviews by the mental health professional
- Make an application to the Tribunal regarding their decision-making ability, treatment, or admission
- Continuity of care, discharge planning and re-entry into the community
- Practice their cultural, religious or spiritual beliefs

11. DUTIES OF PROVIDERS

Persons who provide mental health services have the responsibility to:

- Provide the highest quality, evidence-based, recovery-oriented assessment, individualised care planning, support, care, treatment, rehabilitation and recovery services to mental health consumers without stigma and discrimination

- Practise only within their area of qualification and experience
- Provide the least restrictive assessment, support, care, treatment, and rehabilitation possible given the care and treatment needs of the person who has a mental illness
- Respect the dignity of persons who have a mental illness and their caregivers
- Ensure persons who have mental illness and/or their caregivers and support persons participate in the decisions that affect them
- Ensure consideration of the physical wellbeing and physical health needs of persons in their care
- Respect the wishes of the person who has a mental illness, unless legislation requires otherwise
- Consider the wishes, lived experiences, spiritual and emotional experiences, skills and abilities of persons who have mental illness
- Consider the economic, social, cultural and geographical factors relevant to such persons
- Consider the sexuality, gender and gender identity of such persons
- Inform persons who have mental illness and/or their caregivers about services and treatment options available, and their rights including mechanisms of complaint and redress
- Be responsive to the diverse needs and disabilities of persons who have a mental illness and their caregivers
- Recognise the role of caregivers and support persons and be responsive to their needs
- Respect the privacy and confidentiality of persons who have a mental illness and their caregivers
- Ensure that persons who have a mental illness and their caregivers are not subject to abusive, violent or degrading treatment, are not subjected to forced labour
- Ensure that care and treatment are not used as a means of punishment or for the convenience of other people
- Ensure that the person who has a mental illness and their caregivers are not discriminated against
- Deal with the care complaints of persons who have a mental illness and their caregivers promptly and without retribution
- Ensure their knowledge base is up to date and reflects current accepted best practices in assessment, treatment, care planning, support, and rehabilitation
- Promote the best interests of children or young people when a family member, guardian or carer is being treated for a mental illness
- Participate in the development of professional ethical standards that accord with international human rights principles

12. RIGHTS OF PROVIDERS

People who provide services through the social, justice, health, and mental health systems are entitled to:

- Have their professional qualifications and capabilities acknowledged
- Have their contribution to the assessment, support, care, treatment, rehabilitation and recovery of mental health consumers recognised
- Work in optimal conditions of service delivery and employment including the right to ongoing training and a safe and supportive work environment
- Be actively involved in the planning and management of services
- Contribute to the development and regular review of standards for evaluating services including both the process of service provision and the outcome of assessment,

- individualised care planning, support, care, treatment, rehabilitation and recovery
- Participate in developing policy and service guidelines
- Access mechanisms of complaint and redress if they feel they have been treated unfairly in the workplace
- Expect that social, health and mental health services will be integrated and coordinated while retaining their specialised focus, identity and funding

13. GOVERNMENT DUTIES

The Government shall have a duty to:

- Plan, design, fund and implement programmes for the promotion of mental health and prevention of mental illness in the country that include:
 - o programmes to reduce suicides and attempted suicides
 - o community-based programmes for prevention and promotion
 - o programmes in coordination with education and employment sectors to prevent mental illness and promote mental health
- Set up and maintain rehabilitation services attached to community-care centres to promote integration of persons into society including support for education, employment, vocational training, return-to-work programmes
- Establish and maintain halfway homes or affordable public housing programmes
- Provide support to minors who are caregivers to persons with mental illness
- Plan, design, fund and implement programmes to reduce stigma associated with mental illness
- Take measures to address the human resource requirements of mental health services in the country by planning, developing and implementing educational and training programmes to meet the international guidelines about number of mental health professionals in the country
- Train first responders such as law enforcement officers and crisis response teams in crisis de-escalation strategies and medical officers in prisons in basic and emergency mental healthcare
- Ensure that the curricula of professional and technical medical education programmes that cover health care and social work shall include mandatory training on human rights and the human rights-based approach to mental health care and support
- Include mental health education in school curricula to raise mental health awareness
- Ensure effective coordination between departments dealing with health, law, social justice, employment, education, women's affairs, etc.
- Establish a multisectoral commission to develop and implement a policy for deinstitutionalisation
- Publicise this act

14. CARE AND TREATMENT

Persons who have a mental illness shall be treated, as far as possible, at their home, near their home, or in the community.

If this is not possible, admission to a mental health facility shall be considered. As far as possible, every admission shall be voluntary except where conditions for a facilitated admission exist.

The procedure for admission to a mental health facility is consistent with admission to a hospital treating physical illness.

Where persons lack capacity to make decisions for their mental health care, they may be provided care and treatment at a mental health facility only as a facilitated admission.

Types of Admissions:

Independent/voluntary admission to mental health establishment:

- Any person, who is not a child, who considers themselves to have a mental illness and desires to be admitted to a mental health facility for care and treatment may make a request to the relevant authority in charge of a health facility for admission
- When such an application is received by the relevant authority in charge of a health facility, the person shall, as soon as practicable, have their mental health status assessed by a mental health professional
- If the mental health professional conducting the assessment finds that the mental illness of the person is of a nature that the person concerned may appropriately be provided with care and treatment as an outpatient, the relevant authority in charge of the health facility or their representative or the mental health professional in charge of the person's treatment shall take the necessary steps to ensure that the required levels of care and treatment are provided to the person
- If the health facility does not have a mental health professional, the person shall be transported to a facility that does
- If the mental health professional conducting the assessment finds that the mental illness of the person is of a nature that requires the person to be provided with care and treatment in a mental health facility, the relevant authority in charge of the health facility shall immediately make an application to the relevant authority in charge of a mental health facility to admit the person for mental health care and treatment
- The relevant authority in charge of the mental health facility shall authorise the admission of the person to the mental health facility if the relevant authority is satisfied that:
 - o the person has a mental illness of a severity requiring admission to a mental health facility
 - o the person is likely to benefit from admission to and treatment in the mental health facility
 - o the person has understood the nature and purpose of admission to and treatment in the mental health facility and has made the request for admission of their own free will, without any duress or undue influence and has the capacity to make mental health care and treatment decisions without support or requires minimal support from others in making such decisions
- If a person is unable to understand the purpose, nature or likely effects of the proposed treatment and of the probable result of not accepting the treatment or requires a very high level of support in making decisions, the person shall be deemed unable to understand the purpose of the admission and shall not be admitted under voluntary admission
- A person who is voluntarily admitted under this section shall not be treated without their informed consent
- A person voluntarily admitted under this section has a right to discharge themselves from the mental health facility subject to the below
- If the medical officer or psychiatrist in charge of the treatment of the person is of the opinion that the person meets the criteria for a facilitated admission, they may prevent self-discharge for a period not exceeding 48 hours to allow for assessment for facilitated admission

Facilitated admission:

In any case where a person who has a mental illness lacks decision making ability (as defined previously) to make mental health care decisions, that person may be admitted to a mental health facility as a facilitated admission provided:

- An application is made requesting admission by the nominated representative
- The person has been independently examined on the day of admission or in the preceding seven days, by two mental health professionals, of which at least one is a psychiatrist and the other being either a medical practitioner or any mental health professional, and both independently conclude, based on the examination and, if appropriate, on the information provided by others, that the person has a mental illness of such severity that the person:
 - o has recently threatened or attempted or is attempting to cause self-harm; or
 - o has recently behaved or is behaving violently toward another person or persons or has caused or is causing another person or persons to fear bodily harm from them; or
 - o has recently shown or is showing an inability to care for themselves to a degree that places the individual at risk of harm

The mental health professionals shall not be related by blood (first-degree relative) or marriage to, or in a common law relationship with, the person who is being assessed for facilitated admission.

A facilitated admission of a person to a mental health facility is limited to a period of 30 days.

A person admitted under facilitated admission shall receive treatment as prescribed by the medical officer or psychiatrist in charge of the person's treatment with the consent of the nominated representative if any or as per the advance directive, if any.

In the process of choosing treatment, the medical officer is to consider:

- The views and preferences of the person
- Consequences of treatment being provided or not
- Any second opinion provided

If the medical officer or psychiatrist in charge of the person's treatment is of the opinion that the person no longer meets the criteria for facilitated admission, they may discharge the person or may continue admission as voluntary admission.

If, on the expiry of the 30 days, the medical officer or psychiatrist in charge of the person's treatment is of the opinion that the criteria for facilitated admission continue, they shall make an application to the Tribunal for the continuance of the person in the mental health facility under facilitated admission.

When such an application is made, the Tribunal shall:

- hold a hearing
- ensure that the person, their nominated representative, and a legal representative attend the hearing
- hear evidence from the medical officer or psychiatrist in charge
- make an order either to discharge the person or extend the facilitated admission

If the person cannot afford a legal representative, the state will provide one.

The order of the Tribunal for extension of the facilitated admission shall be for a period of 90 days for the first extension and any subsequent extension, on application may be up to 120 days at a time.

If, during the extended period, the medical officer or psychiatrist in charge is of the opinion that the person no longer meets the criteria for facilitated admission, they shall discharge the person or continue admission as voluntary admission.

At any point in time, the nominated representative of the person who made the application for admission can request the hospital to discharge the person.

Leave to a person admitted as a facilitated admission:

The relevant authority in charge of a mental health facility may grant leave to a person admitted as a facilitated admission for a period not exceeding 7 days at a time.

The relevant authority in charge of a mental health facility may, at any time, revoke the leave if they are satisfied that it is necessary for the improvement of, or to prevent deterioration in the mental health of the person.

Absence without leave of a person admitted as a facilitated admission:

Where persons admitted as a facilitated admission are missing from a mental health facility without being granted leave, the relevant authority in charge of the mental health facility shall inform the police and the person who made the application for admission of that person.

Where persons granted leave refuse on revocation of the leave or on the expiry of the leave to come back to the mental health facility, the relevant authority in charge of the mental health facility may follow the procedures specified for their return to the mental health facility.

The police shall have the responsibility to convey the person back to the mental health facility.

Review or appeal:

A person admitted under facilitated admission, or someone acting on their behalf with the consent of the person, may apply to the Tribunal for review of the decision of the medical officer or mental health professional in charge of the mental health establishment to admit the person to the mental health establishment.

When such an application is made, the Tribunal shall:

- hold a hearing
- ensure that the person and their representative attend the hearing
- hear evidence from the medical officer or psychiatrist in charge
- give a decision regarding facilitated admission within 7 days of application which shall be binding on all the concerned parties

Admission of a minor:

- The admission of a child shall be made on application by their guardian to the relevant authority in charge of the mental health facility.
- Upon receipt of such an application, the medical officer in charge of the mental health facility shall admit the minor if:

- The minor has been independently examined on the day of admission or in the preceding seven days, by two mental health professionals, of which at least one is a psychiatrist and the other being either a medical practitioner or any mental health professional, and both independently conclude, based on the examination and, if appropriate, on the information provided by others, that:
 - the minor has a mental illness of a severity requiring admission to a mental health facility
 - The admission will be in the best interest of the minor with regard to their health, well-being or safety, taking into account the wishes of the minor if ascertainable
 - The mental healthcare needs of the minor cannot be fulfilled unless he is admitted, and
 - All community-based alternatives to admission have been shown to have failed or are demonstrably unsuitable for the needs of the minor
- Under ordinary circumstances, all minors should be accommodated separately from adults. No one under 13 will be accommodated with adults under any circumstances.
- A child's preferences with respect to treatment should be considered depending on their level of capacity
- Facilities shall be provided to enable the guardian of the child, or a person appointed by the guardian of the child, to have unlimited access to the child in the mental health facility, for the period of their treatment
- An application may be made to the Tribunal by the mental health professional in charge of the minor to restrict access if it is considered that restricting access is in the best interests of the minor. The Tribunal shall hold a hearing and may restrict access in whatever terms it so determines.
- Every child shall be treated only with the consent of the guardian of the child

Emergency treatment:

- Notwithstanding other provisions of this Act, persons who have a mental illness may be provided with emergency treatment for a physical or mental illness by any medical practitioner at any health facility or mental health facility, or in the community, with or without the consent of the person, only if it is immediately necessary to prevent:
 - death or irreversible harm to the health of the person; or
 - the person from inflicting serious harm to their self or others
- Such emergency treatment shall be limited to a period of 72 hours
- If the emergency treatment takes place in a health facility, after the period of 72 hours, the admission shall be converted to a voluntary or facilitated admission if needed, following the process in <the subsection about voluntary or facilitated admission>

Special treatments:

Electroconvulsive treatment and psychosurgery shall:

- Only be provided in accordance with written instructions by a psychiatrist
- Applied under the supervision of a psychiatrist
- Only provided with the consent of the person concerned or if they lack capacity to consent, with the consent of their nominated representative

In addition to the above psychosurgery shall only be performed with approval from the mental health commission.

In the case of a minor, electroconvulsive treatment and psychosurgery are prohibited.

Clinical and experimental research:

Clinical and experimental research shall not be conducted without the consent of the person with mental illness and only after permission is granted from an Institutional Review Board.

In the case where the person lacks decision-making ability and cannot provide informed consent:

- Consent is to be sought from the nominated representative; and
- Permission to conduct the research is to be obtained from an Institutional Review Board followed by the Mental Health Commission; and
- This research shall be conducted only if it cannot be performed on persons who can give informed consent; and
- The purpose of the research is to benefit the target population

In the case of minors:

- Consent is to be sought from the guardian of the minor; and
- Permission to conduct the research is to be obtained from an Institutional Review Board followed by the mental health commission; and
- This research shall be conducted only if the purpose is to benefit that target population

Restrictive interventions:

Persons who have a mental illness shall not be subject to seclusion.

Persons who have a mental illness shall not be subject to forced sterilisation, forced contraception, or forced menstrual suppression.

Notwithstanding any provision in the Medical Termination of Pregnancy Act, no person with a mental illness shall be forced to medically terminate a pregnancy against their will. Persons with mental illness lacking decision-making ability shall not be forced to terminate a pregnancy while they lack decision making ability unless it is absolutely necessary to prevent immediate harm to the health of the mother as determined by 2 medical practitioners, and only with the consent of the nominated representative.

Persons who have a mental illness shall not be subjected to physical restraint unless it is the only means available to prevent immediate or imminent harm to the person concerned or to others.

Any physical restraint applied to persons who or have a mental illness shall:

- Be authorised by the mental health professional or medical officer in charge of the person's treatment
- Not be used as a means of punishment or for the convenience of others

The reasons and duration of every use of restraint shall be recorded and made available to the mental health commission on a regular basis.

Any physical restraint used in each instance shall be restricted to a maximum period of two hours and shall:

- not be renewed without a documented inspection of the area of restriction and assessment of the health and safety of the person by the mental health professional
- not exceed twelve hours unless an application is made to the mental health commission within that period for the application of the restraint for a longer period

A person subjected to physical restraint shall always be in the direct vision of a mental health professional.

The nominated representative of the person shall immediately be informed when the person is physically restrained.

Discharge protocol:

At the time of discharge, the person with mental illness shall be provided with a discharge protocol detailing access to community services and a timeline for follow-up.

Maintenance of electronic records:

To ensure continuity of care between mental health facilities and primary/community care, electronic records will be maintained for all patients with details about treatment provided and the discharge protocol.

Persons at home who have a mental illness:

Where persons at home have a mental illness of such a degree that in the opinion of the nominated representative warrants care and treatment by admission to a health facility, and that person is not willing to go to a mental health facility for that purpose, the nominated representative may make a request to the nearest health facility for an assessment at home.

Where such a request is received, the relevant authority from the health facility shall arrange for a mental health professional to visit the person who may have or has a mental illness at their home and make an assessment.

If the mental health professional on assessment is of the opinion that the person has a mental illness to an extent which puts their own life or the safety of others at risk, the mental health professional may request the emergency medical services or a police officer for assistance in transferring the person to the nearest health facility for further assessment.

A police officer to whom the request is made shall give all the necessary assistance to the mental health professional for transferring the person to the nearest health facility.

Persons in public who have or may have a mental illness

A police officer shall, on being informed by a member of the public or on observing a person who may have or has a mental illness in a public place and behaving in such a way which may put their own lives or the safety of others at risk, have such person conveyed by the emergency medical services or a police officer to the nearest health facility for assessment.

15. PERSONS SUBJECT TO CRIMINAL PROCEEDINGS WHO MAY HAVE OR HAVE A MENTAL ILLNESS

Designation of a mental health facility for persons who may have or have a mental illness subject to criminal proceedings:

- In consultation with the Minister responsible for correctional services, a mental health facility shall be designated which may admit and provide care and treatment to persons subject to criminal proceedings who may have or have a mental illness. This facility may be within a prison or a secure unit in a mental health facility.

Persons who may have a mental illness who are detained in custody pending investigation of an alleged crime:

- Where an officer in charge having custody of a person observes or receives information that a person in custody may have or has a mental illness, the officer in charge shall, within forty-eight hours, and prior to the person being charged with any criminal offence, have the mental health status of the person assessed by a mental health professional.
- The mental health professional conducting the assessment shall submit a written report to the officer in charge having custody of the person within forty-eight hours of the assessment and shall specify in the report:
 - o The mental health status of the person
 - o If the person has a mental illness, a plan for the care and treatment of that person
- Where a mental health professional conducting the assessment finds that the mental illness of the person is of a nature that the person concerned may appropriately be provided with care and treatment as an outpatient, the officer in charge having custody of the person shall take the necessary steps to ensure that the required levels of care and treatment are provided to the person.
- Where a mental health professional conducting the assessment finds that the mental illness of the person is of a nature that requires the person to be provided with care and treatment in a mental health facility, the officer in charge having custody of the person shall within forty-eight hours, make an application to the Court for an order to admit the person to a mental health facility for mental health care and treatment.
- The relevant authority in charge of the mental health facility shall have the person examined within 10 days of the order and provide a report to the judge or magistrate issuing the order.
- Notwithstanding any treatment recommendations by the mental health professional, the person with mental illness shall have the right to proceed with criminal proceedings with any required procedural accommodations should they choose to. The person should be informed, in clear & accessible language, of the potential consequences of both courses of action: mental health treatment and proceeding with criminal proceedings before a decision is made.
- Where the relevant authority in charge of the mental health facility has established that the person no longer requires care and treatment in the mental health facility and/or that the required care and treatment can be given in the community as an outpatient, the relevant authority in charge of the mental health facility shall prepare and submit a discharge report and discharge the person to the officer in charge having custody of the person.
- Persons admitted to a mental health facility under this section shall be provided the same care and treatment as any other person under this Act.

Persons who may have or have a mental illness who have been charged with a criminal offence and remanded in custody for trial or who have been convicted and are awaiting sentencing:

- Where an officer in charge having custody of a person or a jury observes or receives information that a person in custody may have or has a mental illness, the officer in charge shall, within forty-eight hours, have the mental health status of the person assessed by a mental health professional.

- The mental health professional conducting the assessment shall submit a written report to the officer in charge having custody of the person within forty-eight hours of the assessment and shall specify in the report:
 - o The mental health status of the person
 - o If the person has a mental illness, a plan for the care and treatment of that person
- Where a mental health professional conducting the assessment finds that the mental illness of the person is of a nature that the person concerned may appropriately be provided with care and treatment as an outpatient, the officer in charge having custody of the person shall take the necessary steps to ensure that the required levels of care and treatment are provided to the person.
- Where a mental health professional conducting the assessment finds that the mental illness of the person is of a nature that requires the person to be provided with care and treatment in a mental health facility, the officer in charge having custody of the person shall within forty-eight hours, make an application to the Court for an order to admit the person to a mental health facility for mental health care and treatment.
- The relevant authority in charge of the mental health facility shall have the person examined within 10 days of the order and provide a report to the judge or magistrate issuing the order.
- Notwithstanding any treatment recommendations by the mental health professional, the person with mental illness shall have the right to proceed with criminal proceedings with any required procedural accommodations should they choose to. The person should be informed, in clear & accessible language, of the potential consequences of both courses of action: mental health treatment and proceeding with criminal proceedings before a decision is made.
- Where the relevant authority in charge of the mental health facility has established that the person no longer requires care and treatment in the mental health facility and/or that the required care and treatment can be given in the community as an outpatient, the relevant authority in charge of the mental health facility shall prepare and submit a discharge report and discharge the person to the officer in charge having custody of the person.
- Persons admitted to a mental health facility under this section shall be provided the same care and treatment as any other person under this Act.

Persons who may have or have a mental illness who are serving a custodial sentence for a criminal offence

- Where an officer in charge of a prison observes or receives information that a person in custody may have or has a mental illness, the officer in charge shall have the mental health status of the person examined within forty-eight hours by a mental health professional
- The mental health professional conducting the assessment shall submit a written report to the officer in charge of the prison within 48 hours of the assessment and shall specify in the report:
 - o The mental health status of the person
 - o If the person has a mental illness, a plan for the care and treatment of that person
- Where a mental health professional conducting the assessment finds that the mental illness of the person is of a nature that the person concerned may appropriately be provided with care and treatment in the prison, the officer in charge of the prison shall take the necessary steps to ensure that the required levels of care and treatment are provided to the person.
- Where a mental health professional conducting the assessment, finds that the mental illness of the person is of a nature that requires the person to be provided with care and treatment

in a mental health facility, the officer in charge of the prison shall, within forty-eight hours, transfer the person to a mental health facility for mental health care and treatment.

- It shall be the responsibility of the officer in charge of the prison to always secure the custody of the person while they are in the mental health facility.
- The relevant authority in charge of the mental health facility shall have the person examined within ten days and provide a report to the officer in charge of the prison
- Where the relevant authority in charge of the mental health facility has established that the person serving a custodial sentence who has a mental illness no longer requires care and treatment in a mental health facility or that the required care and treatment can be given in the prison, the relevant authority in charge of the mental health facility shall prepare and submit a discharge report to the officer in charge of the prison.
- Where a person serving a custodial sentence is discharged after care and treatment in the mental health facility, the person shall be discharged to the custody of the officer in charge of the prison for the continuation of their sentence or discharged if their sentence has been served.
- When a person serving a custodial sentence is admitted to a mental health facility, the time spent in the mental health facility shall be treated as part of their custodial sentence.

The relevant authority in charge of a designated mental health facility in which persons who are serving a custodial sentence are admitted, shall ensure that a report prepared by a mental health professional on the mental health status of the person is submitted periodically, but no less than every 3 months to the Court or the officer in charge of the prison. This report shall include a plan for further mental health care or the discharge of the person from a designated mental health facility.

Referral between designated health facilities of persons subject to criminal proceedings who have a mental illness:

If the relevant authority in charge of a mental health facility is of the opinion it would be for the benefit of the person admitted, or that it is necessary for the purpose of obtaining special treatment for the person, to transfer the person to another designated health facility, they shall transfer the person after obtaining consent from the designated health facility where the person is being transferred to, and the approval of the magistrate who has made the order admitting the person to the mental health facility. In the case of a person serving a custodial sentence in a prison, consent for the transfer shall be obtained from the officer in charge of the prison.

Transport of persons subject to criminal proceedings who have a mental illness:

If the person subject to criminal proceedings who has a mental illness has to leave the mental health facility to appear in court or for any other reason, it will be the responsibility of police/prison officer to convey the person to and from the facility.

Persons subject to criminal proceedings who have a mental illness and admitted to a mental health facility who abscond:

Where persons subject to criminal proceedings who have a mental illness abscond from a mental health facility or are considered by the relevant authority in charge of a designated mental health facility to have absconded, the relevant authority in charge of that designated mental health facility shall immediately notify the police in writing.

Persons convicted interstate who may have or have a mental illness who abscond to Barbados:

Where the relevant authority in charge of a mental health facility is advised or becomes aware that a person seeking care and treatment from or admission to the mental health facility may be a person convicted interstate, they shall immediately notify the police in writing.

Mental health diversion:

Persons with mental illness who commit a minor offence and are detained in custody or awaiting trial might be eligible for a mental health diversion. A mental health diversion implies that the defendant will be moved to the healthcare system and out of the criminal justice system.

If the court or law enforcement officers are of the opinion that the person has a mental illness that played a significant role in the offence, they can request an evaluation from a mental health professional. The evaluation and treatment guidelines can be given by any appropriately qualified mental health professional as decided by the Commission.

The criteria to determine eligibility for a mental health diversion are:

- The offence is minor
- The defendant suffers from a mental health condition as per the evaluation of a mental health professional
- There is satisfactory evidence that the mental health condition may have played a role in the offence
- The mental health professional is of the opinion that community or inpatient treatment would improve the symptoms that led to the offence
- The defendant voluntarily consents to the diversion and agrees to comply with the treatment described by the mental health professional
- The defendant will not pose an unreasonable risk of danger to public safety

The mental health professional will recommend the course of action that should be followed if the diversion is to take place. If the person with mental illnesses chooses to go through the mental health diversion, they must follow the prescribed treatment. If they do not follow the prescribed treatment, they will be directed back to the criminal justice system.

Persons admitted to a mental health facility under this section shall be provided the same care and treatment as any other person under this Act, except that the course of treatment must be followed.

The course of treatment must be recovery-focused and not punitive.

It will be the responsibility of the government to ensure access to required services.

If the person with mental illness has decision making ability, they can choose to either take the mental health diversion or go through criminal proceedings, with procedural accommodations as might be required. If the person lack decision making ability, they will have to compulsorily go through mental health diversion.

Prior to seeking consent from the person with mental illness for a diversion programme, they should be informed of what the diversion programme would be likely to entail in terms of treatment.

For a person who follows the mental health diversion programme as prescribed, there will be no trial or conviction, and no criminal record.

16. MENTAL HEALTH COMMISSION

Establishment of the Commission:

There shall be established a Commission called the Mental Health Commission which shall function as the regulatory body for the mental health sector.

Functions of the Commission

The functions of the Commission are to:

- Oversee the planning and management of mental health care and treatment
- Set standards for accreditation of mental health facilities
- Maintain a register of mental health establishments and mental health professionals
- Promote standards of best practice and efficiency of mental health services
- Make recommendations to the Minister of Health about cadres of professionals who qualify as mental health professionals under this Act
- Set criteria and standards for specific mental health care services, interventions, and treatments as necessary, including developing guidelines for their use
- Inspect with sufficient frequency as may be prescribed every mental health facility to ensure that the conditions, treatment and care of PATIENTS comply with the provisions of this Act
- If a person receiving treatment at a mental health service dies or is the subject of an injury or a notifiable incident, an independent inquiry into the circumstances of the death, injury or incident shall be conducted within 30 days
- Collect, disaggregate, and compile data on the use of mental health services, physical comorbidities, suicide, and the duration of hospitalisations.
- Receive and maintain a register of advance directives lodged with the Commission, and make them available to concerned authorities
- Review the use of restraints in mental health facilities
- Develop guidelines for responsible reporting on mental health and suicide by the media
- Enforce media reporting guidelines and hold media organisations responsible for any breach of guidelines.
- Receive complaints about services/establishments that do not follow the provisions of this Act

Membership of the Commission:

- Options (ex-officio):
 - o Chief medical officer of the Ministry responsible for Health
 - o Director of Mental Health Services, Ministry responsible for Health
 - o Director or Deputy Director of the Ministry responsible for social services
 - o Chairperson/president/head of National body for the disabled
 - o Chief nursing officer
 - o Health services administrator with responsibility for government mental health facilities
- Others:
 - o One registered psychologist
 - o One registered psychiatrist
 - o One registered mental health nurse
 - o One current or past user of mental health services
 - o A family member or caregiver of a person with mental illness

- Two representatives from registered non-profits or civil society organizations with a focus on mental health

The Minister for Health shall appoint the members of the Commission on such terms and conditions and such allowances and remuneration as may be prescribed.

The Minister shall appoint one of the members of the Commission as Chairperson of the Commission.

The appointment of the Chairperson and members of the Commission shall be published by notice in the Gazette.

The Minister shall call for nominations to membership of the Commission from those individuals who are not ex-officio members, and the Minister shall make the appointment from the nominations.

The members of the Commission who are not ex-officio members shall hold office for three years and are eligible for reappointment for a maximum of two consecutive terms.

A member, except an ex-officio member, may resign from office by letter addressed to the Minister.

Where a person is appointed to replace another person, the person so appointed shall serve as a member for the remaining period of office of the person replaced.

The Minister shall appoint a Secretary/executive officer who is not a member of the Commission and who shall be responsible for:

- Ensuring the overall smooth running of the Commission
- Convening the sittings of the Commission after consultation with the Chairperson and members
- Maintaining records of the Commission
- Issuing summons and notices on behalf of the Commission
- Implementing decisions made by the Commission
- Taking appropriate steps to enable the Commission to enforce its orders
- Ensuring that orders or directions given by the Commission are complied with
- Preparing an annual budget at the direction of the Chairperson for approval by the Minister

Meetings of the Commission:

The Commission shall meet at least six times a year but otherwise:

- As the Chairperson may direct, or
- As may be requested in writing to the chairperson by not less than six members of the Commission

The time and place of a meeting of the Commission shall be determined by the Chairperson.

Seven members of the Commission shall constitute a quorum for a meeting.

A meeting of the Commission shall be presided over by the Chairperson but in the absence of the Chairperson the members present at the meeting shall elect a member to preside over the meeting and that member shall have all the powers of the Chairperson at the meeting.

All matters for determination by the Commission at a meeting shall be decided by a simple majority of votes of the members present and voting thereon.

A member who has a direct interest in a matter that is to be decided at a meeting of the Commission shall notify the Chairperson or, if the member is the Chairperson, the Secretary, of the interest and shall not be present or vote at the meeting where the matter is considered or decided unless the Commission authorises otherwise.

The Commission shall, through the Chairperson, submit an annual report of its activities to the Minister.

Decisions without meeting:

Where a matter requires a decision of the Commission and it is not convenient or possible for the Commission to meet to determine the matter, the Secretary shall, on the instructions of the Chairperson, circulate papers regarding the matter to all members for consideration and decision or approval, and if the members unanimously approve a decision or resolution by signing it, the decision or resolution shall have the same effect as a decision or resolution passed at a meeting of the Commission.

Continuation of members until new members are appointed:

Notwithstanding section <section number about term and re-election> where at the end of the period specified in that section, all the members of the Commission vacate office and the new members of the Commission have not been appointed, the persons vacating as members shall continue until the appointment of the new members of the Commission or for a further period of three months, whichever occurs first.

17. MENTAL HEALTH TRIBUNAL

There shall be established a Mental Health Review Tribunal, a quasi-judicial review body.

Membership of the Tribunal:

The Tribunal will have five members appointed by the Minister for health:

- a sitting judge, a retired judge, or an officer of the legal services in Barbados eligible to be appointed as a judge, or a lawyer with X years of experience - this will be the Chairperson
- two members who are health professionals who have training in health and/or mental health and at least ten years experience practising in the field of health and/or mental health, at least one of whom shall be a psychiatrist or a medical officer with special knowledge and training in mental health
- a representative from a registered non-profit or civil society organisation with a focus on mental health
- any well-known member of any community who has
 - a special interest or experience in mental illness
 - the knowledge and experience relevant to performing the role of a community member of the Tribunal

The Minister shall appoint the Chairperson and members of the Tribunal on such terms and conditions and such allowances and remuneration as may be prescribed.

The appointment of the Chairperson and members of the Tribunal shall be published by notice in the Gazette.

A member shall hold office for a term of three years and may be reappointed.

A member of the Tribunal shall not take part in any hearing in relation to a matter in which the member has a direct interest.

A member of the Tribunal or any other person acting under the direction of the Tribunal shall not be under any civil or criminal liability in respect of anything done or purported to be done in good faith in pursuance of this Act.

The Minister shall appoint a Secretary/executive officer to the Tribunal who shall be responsible for:

- ensuring the overall smooth running of the Tribunal
- convening the sittings of the Tribunal after consultation with the Chairperson and members
- the issuing of summonses and notices on behalf of the Tribunal
- the implementation of decisions made by the Tribunal
- taking appropriate steps to enable the Tribunal to enforce its orders
- ensuring that orders or directions given by the Tribunal are complied with

Jurisdiction of the Tribunal:

The Tribunal shall have exclusive jurisdiction to hear and determine mental health matters.

- Summon any person to appear before it
- Examine on oath, affirmation or otherwise a witness or any person appearing before it
- Require any person to produce any document which the Tribunal considers relevant.

A person summoned to attend or appear before the Tribunal as a witness has the same protection and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

Without prejudice to the generality of the foregoing, the Tribunal shall hear and determine matters relating to:

- Appeals to review, alter, modify or cancel any advance directive under <section number of AD>: within 7 days
- The appointment of nominated representatives under section <section number of NR>: within 7 days
- Revoking the appointment of a nominated representative: within 7 days
- Appeals by the person with mental illness or their nominated representative for discharge from a facilitated admission: within 3 days
- Complaints regarding violation of the rights outlined in <rights section>: within 21 days
- The appointment of nominated representatives of a child under <relevant section>: within 7 days
- Applications by the psychiatrist or medical officer in charge of a person's treatment for the extension of facilitated admission under <facilitated admission section>: within 7 days

Process of Application to the Tribunal:

Any person, being the person who may have or has a mental illness, their nominated representative, a member of the public, or any other person not being a child may make an application to the Tribunal under this section.

Applications on behalf of a child may be made by the guardian of the child.

The application shall be lodged to the address on the prescribed form by post, or by electronic means such as by email or online, or in person, or in exceptional circumstances, by telephone, or in any other form specified by the Minister.

The application shall specify:

- The name and contact detail of the applicant;
- The name of the person to whom the application refers.
- Details of the application.

Receipt of all applications will be acknowledged in writing by the Secretary of the Tribunal to the applicant at the address specified in the application within three days of receipt of the application.

There shall be no fee or charge levied on making such application.

Proceedings

The Tribunal shall sit as and when there is a matter for the Tribunal to adjudicate upon at the mental health facility where the person has been admitted.

Laws relating to evidence shall apply to witnesses or persons appearing before the Tribunal, and at a hearing, both parties shall have the right to view all documents produced by the other party.

Three members of the Tribunal, of whom one shall be the Chairperson, shall constitute the quorum.

Each member of the Tribunal shall have an equal vote and decisions shall be reached by a majority vote and in the event of equality of votes the Chairperson shall have a casting vote.

A decision of the Tribunal shall have the same force and shall be executed in the same manner as a judgment or order of the Supreme Court.

A person before the Tribunal may be represented by an attorney-at-law or by a representative of the person or any other person or the person may represent themselves. If the person requests for representation but cannot afford it, a representative should be provided free of charge.

The Tribunal shall, before making a decision:

- Afford the parties the opportunity to be heard
- Observe the rules of natural justice.

Notwithstanding the foregoing, the Tribunal shall have the power to conduct proceedings in whatever manner it considers most appropriate.

Proceedings of the Tribunal shall not be open to the public.

Communicating decisions of the Tribunal

At the conclusion of the proceedings, the Tribunal shall prepare and deliver its decision together with the reasons for such decision within five business days of completion of the hearing.

Rules of procedure and appeals

The Minister may make rules with respect to the proceedings, practices and procedures of the Tribunal, and shall by such rules provide for the remuneration and allowances to be paid to the members of the Tribunal.

Any person aggrieved by the decision of the Tribunal given or made upon any application before it, may appeal to the Supreme Court.

18.OFFENCES AND PENALTIES

Persons running a mental health establishment without registration, or mental health professionals knowingly working in such an establishment shall be liable to a fine up to X and/or imprisonment up to x years for the first offence, fine up to Y and/or imprisonment up to Y years for the second offence, and fine up to Z and/or imprisonment up to z years for every subsequent offence.

Any person who contravenes any provision of this Act or violates the rights of persons who have a mental illness shall be liable to a fine of up to X and/or imprisonment x years.

19.PROTECTION OF PERSONS ADMINISTERING THE ACT

No person who has made an application for admission to a mental health facility of any person, or signed or carried out, or done any act with a view to signing or carrying out, an order purporting to be an order made under the provisions of this Act or any report, application, recommendation or certificate purporting to be made under this Act, or has done anything or given any advice in a professional capacity in pursuance of this Act, shall be liable to any civil or criminal proceedings in any court in respect thereof whether on the ground of want of jurisdiction or otherwise, unless he has acted in bad faith or without reasonable care.

No such proceedings shall be brought against any person in any court without the leave of the court, and leave shall not be granted unless the court is satisfied that there is substantial ground for supposing that the person against whom it is sought to bring the proceedings has acted in bad faith or without reasonable care.

20.MISCELLANEOUS

The Minister may make regulations:

- respecting any matter deemed necessary or advisable to carry out the intent and purposes of this Act
- for the better carrying into effect of all or any provisions of this Act and, in particular, may by such regulations provide for:
 - o powers and duties of psychiatrist or medical officer in charge and other persons employed in mental health facilities
 - o the necessary training in mental health care and treatment is required
 - o the forms and procedures required for giving effect to the provisions of this Act, and of any such regulations
 - o the records to be kept in mental health facilities
 - o the fees to be charged under this Act
 - o the fines to be levied for contraventions of any provision of the Act